In the Supreme Court of the United States

October Term, 1969

No. ~~1517~~ 231

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, Local 1416, AFL-CIO,
Petitioner,

vs.

ARIADNE SHIPPING COMPANY, LIMITED, a Liberian corporation, and EVANGELINE STEAMSHIP COMPANY, S. A., a Panamanian corporation,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, THIRD DISTRICT, STATE OF FLORIDA

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Petitioner, (hereinafter referred to as "the Union"), requests a writ of certiorari to review the judgment of the District Court of Appeal, Third District, State of Florida, in this case.

OPINION BELOW

The Florida District Court of Appeal, Third District, reported at 215 So.2d 51, affirmed the permanent injunction granted to the Respondents by the Circuit Court of Dade County, and the Supreme Court of Florida denied certiorari.

JURISDICTION

Petitioner contends jurisdiction of this Court is invoked under 28 U.S.C. §1257(3). The judgment of the District Court of Appeal was filed on October 29, 1968. The order of the Supreme Court of Florida was filed on March 19, 1969.

QUESTIONS PRESENTED

According to the Union the petition presents the following questions:

1. Whether the National Labor Relations Act preempts state jurisdiction to enjoin peaceful picketing by a longshore union protesting the payment of substandard wages to non-union workers employed to load a foreign flag vessel in an American port.

2. Whether the issuance of an injunction against peaceful picketing, protesting substandard wages, violates petitioner's rights under the First and Fourteenth Amendments to the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Union says the following constitutional and statutory provisions are applicable:

Article VI, 2nd Paragraph;
First and Fourteenth Amendments;
National Labor Relations Act, §§7;8(b)(4),(7); and 9(a),(b).

STATEMENT OF THE CASE

Respondents are foreign corporations who operate one foreign-flag ship (S. S. ARIADNE) on passenger cruises to foreign ports from Miami, Florida. (There was a second foreign-flag ship, S. S. BAHAMA STAR, cruising to foreign ports up to November 1, 1968, but it has ceased operating, no longer is owned by Respondent, and thus the question is moot as to it.) However, Respondents, for clarity, will hereinafter still be referred to as "Foreign Vessels".

The Foreign Vessels, owned by foreign corporations and under foreign registry, were operated by foreign seamen, none of whom were members of the Union. These crewmen signed and were covered by Ships Articles of Liberia and Panama.

These ships carried only passengers. They carried no cargo whatsoever. **There was no loading, unloading, or storing of cargo.** Trial counsel for the Union well knows these facts. It was in response to his cross-examination

that T. F. Kane so testified[1] in the companion case,[2] involving the same Union, the same type picketing, and the same counsel for the parties.

It is now clear why the record is void of any evidence of actual longshore work done in regard to the Foreign Vessels, just as the record is void of any evidence of actual hiring of employees to do this non-existent work. Likewise the record does not contain any reference to wage scales or wages leading the District Court of Appeals below to agree with the trial court "that no real dispute over wages really existed."

Petitioner's whole claim is based on the bald assertion that the Foreign Vessels employed Americans to do longshore work in Florida ports. Not only is this unsupported in the record, it is categorically false. The true facts have

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[1]*Eastern Steamship Lines, Inc. v. International Longshoremen's Association*, 66C-5298, testimony under oath on May 20, 1966 before the Honorable Gene Williams, Circuit Judge in the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County, which was the trial court action from which the Union appealed in the cases in footnote 2.

Q. (By Mr. Gopman) What about the cargo which is loaded or unloaded from your ships?
A. We don't have any cargo.
Q. No cargo at all?
A. No.
Q. On either vessel?
A. Either vessel.
Q. Do you load or ship automobiles?
A. No, sir, not any more. I haven't done it for a long time.
Q. You used to do that?
A. Don't take cars either way.

[2]*International Longshoremen's Association, Local 1416, AFL-CIO v. Eastern Steamship Lines, Inc.*, Fla.App.1966, 193 So.2d 73, and Fla. App.1968, 211 So.2d 858, where the same District Court of Appeal first affirmed the granting of a temporary injunction and then the granting of a permanent injunction.

been pointed out to the trial court, the appellate court and the Florida Supreme Court by the briefs and record. That is why the trial court found "that there is no labor dispute" and why this finding was twice affirmed on appeal (after the temporary injunction and again after the permanent injunction) and not disturbed on certiorari to the Florida Supreme Court. It also explains why the Union had no evidence to the contrary to present to the trial court between the granting of the temporary injunction[3] (in May, 1966) and the granting of the permanent injunction (in May, 1967), a period of over eleven months.

The Union first picketed claiming, "Eastern Steamship Co. refuse to maintain adequate safety conditions for passengers and employees." This was enjoined and a few days later the Union picketed again, using the same signs only substituting the ships' names for "Eastern". Immediately thereafter a verified complaint was filed against the Union stating that (1) neither the Union nor its members worked for the Foreign Vessels or held themselves out for employment on the vessels, (2) while picketing along side the ships the pickets walked among embarking and disembarking passengers so that their presence was conspicuous and noticed by the passengers, passing out handbills to the Miami passengers implying that the vessels were unsafe, (3) the signs contained statements that were false, untrue and libelous, (4) there was no labor dispute between the owners of the foreign vessels and the Union, (5) the foreign-flag ships were operated by foreign corporations and the seamen on the foreign vessels were covered by Ships Articles of Panama

[3]Affirmed on appeal, *International Longshoremen's Association, Local 1416, AFL-CIO v. Ariadne Shipping Company, Limited,* a Liberian corporation, et al, Fla.App.1967, 195 So.2d 238.

and Liberia, and (6) the unlawful picketing and libelous statements constituted malicious interference with the business relations of the Foreign Vessels.

At a hearing on May 26, 1966, six days after the Union was enjoined from picketing Eastern, the Union through its attorneys made it abundantly clear that the Union was concerned with the "safety conditions" aboard the ships. Union counsel stated, "If you read the sign, your Honor, that is exactly what we are complaining about in the sign — the safety conditions are improper."

The trial court enjoined the Union from committing a tort, that is, from continuing unlawful acts in derogation of the rights of the Foreign Vessels. The handbills passed out to the passengers in Miami clearly were libelous and by the false statements therein the passengers were encouraged not to do business with the Foreign Vessels. The handbills make no reference to any labor dispute. (Indeed, this Union does not even hold its members out for employment in operating ships. The Foreign Vessels have no need of the Union's longshoring services. Thus, clearly there could be no labor dispute.)

The Union thereafter abandoned its claim regarding safety thereby conceding that the injunction was proper in part. The facts regarding the safety accusations have been reiterated so this Court can see what the Union actually attempted to do before falling back on its unsupported and untrue longshore and wage allegations. But since these claims relate to alien seamen aboard foreign-flag ships owned by foreign corporations, they were also properly enjoined by the trial court, whose action was affirmed on appeal by the District Court of Appeal below. See **McCulloch v Marineros de Honduras,** 372 U.S. 10, (1963), and **Incres Steamship Company, Ltd. v. International Maritime Union,** 372 U.S. 24 (1963).

REASONS FOR DENYING THE WRIT

1] Petitioner seeks to avoid the decisions of this Court in the **McCulloch** and **Incres** cases, supra. Previously the Union had candidly admitted, in their brief to the District Court of Appeal below that these two decisions "touch on the subject, and signal the establishment of significant precedent." Now to avoid this binding effect, Petitioner tries to claim that there is involved "traditional longshore operations, the loading, unloading and storage of cargo", Union's Petition at page 8. Respondents categorically deny this and further state that such allegations are totally unsupported by the record. These are foreign corporations, owning foreign-flag ships, which operate cruises to foreign ports transporting people not cargo. The crew is foreign and none belong to the Union nor are any of the Union members employed to perform any work in connection with the Foreign Vessels.

In the **McCulloch** case, supra., regarding the National Labor Relations Act, this Court unequivocally held:

> . . . the jurisdictional provisions of the Act do not extend to the maritime operations of foreign-flag ships employing alien seamen. 372 U.S. 13.

The wisdom of the decision is obvious when the Court goes on to point out that any other decision might require that the National Labor Relations Board inquire into the internal discipline and order of all foreign vessels calling at American ports. The Court continues:

> Such activity would raise considerable disturbance not only in the field of maritime law but in our international relations as well. In addition, enforcement of Board orders would project the courts into application of the sanctions of the Act to foreign-flag ships on a purely ad hoc weighing of contacts basis. This would inevitably lead to embarrassment in foreign affairs and be entirely infeasible in actual practice. 372 U.S. 19.

The **Incres** case presents the same basic holding. Consequently, it need not be further elaborated upon except to say that, like **McCulloch,** it was a case of a foreign ship operated by foreign seamen under foreign Articles, flying a foreign flag, and being picketed by an American union. Respondents believe these two cases are controlling authority. It is interesting to note that while the Union cites many cases, none are factually similar, i.e. foreign ships employing alien seamen being picketed by an American union.

2] The Union attempts to argue justification for its actions by relying on the Freedom of Speech provision of the Constitution. The fallacy of this argument is that the court enjoined the Union from committing a tort, that is, from continuing unlawful acts in derogation of the rights of the Foreign Vessels. The handbills passed out to the passengers in Miami clearly were libelous and by the false statements therein the passengers were encouraged not to do business with the Foreign Vessels. The handbills make no reference to any labor dispute. That portion of the unlawful conduct of the Union directed toward discouraging the passengers from doing business with Foreign Vessels was unlawful and in violation of Florida law.

Such picketing is much more than "free speech"[4]. This Court, in **Hughes v. Superior Court of California,** 339 U.S. 460,464 (1950) so characterized it:

> But while picketing is a mode of communication it is inseparably something more and different. Industrial picketing "is more than free speech, since it involves patrol of a particular locality and since the very presence of a picket line may induce action of one kind or another, quite irrespective of the nature of the ideas which are being disseminated."

This holding has been quoted with favor by Florida appellate courts, which have often enjoined picketing such as this. **Young Adults for Progressive Action, Inc. v. B & B Cash Grocery Stores, Inc.,** Fla.App. 1963, 151 So.2d 877, and **N.A.A.C.P. v. Webb's City, Inc.,** Fla.App. 1963, 152 So.2d 179.

The Union's current claim that they were protesting substandard wages could relate only to alien seamen aboard a foreign-flag ship and this activity was also properly enjoined by the trial court. See **McCulloch** and **Incres** cases, supra.

3] With only one vessel involved, Petitioner's claim that this case has "substantial general importance" is misplaced. As it has been pointed out, no longshore operations are involved. Respondents only transported passengers to foreign ports, not cargo. No member of the foreign crew belongs to this Union and conversely no member of this Union works aboard the Foreign Vessels. It is solely now a matter involving one foreign-flag ship and the foreign corporation which owns it.

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[4]In the same manner, yelling "fire" in a crowded theater when there is no fire is not protected as "free speech".

The Union has had its day twice (temporary injunction and permanent injunction) in the trial court, together with many other hearings in the trial court on various motions. It has had two additional chances on appeal (the District Court of Appeal decision below and the same Court's affirmance of the temporary injunction), plus an unsuccessful attempt to get the Supreme Court of Florida to grant certiorari. This Petition is merely the Union asking for still another judicial determination even after these five attempts have failed (two in the trial court, two in the Appellate Court and one in the Supreme Court of Florida). Five times the Foreign Vessels' right to injunctive relief has been sanctioned. Respondents sincerely believe the Union has been accorded every reasonable opportunity for legal redress.

CONCLUSION

For the foregoing reasons it is urged that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true copy of the foregoing Respondent's Brief in Opposition to Petition for a Writ of Certiorari to the District Court of Appeal, Third District, State of Florida, was air mailed, postage prepaid, to the attorneys for the Petitioner, LOUIS WALDMAN, ESQ., and SEYMOUR M. WALDMAN, ESQ., 501 Fifth Avenue, New York, New York 10017, this 30th day of July, 1969.

THOMAS H. ANDERSON

THOMAS H. ANDERSON